IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3125 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.THAKER

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

SWAMINARAYAN SANSKRUTI SEVA TRUST - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

==========

Appearance :
MS MAMTA R VYAS for Petitioner(s) : 1,
Ms. Trusha Patel, Asst. GOVERNMENT PLEADER for Respondent(s) : 1 - 2.
MR AD OZA for Respondent(s) : 2,

==========

CORAM : HONOURABLE MR.JUSTICE K.M.THAKER

Date : 18/12/2007
ORAL JUDGMENT

At the outset, it is required to be noted that Ms. Vyas, learned advocate for the petitioner while making her submissions stated that the present petition is identical to the group of petitions being

Special Civil Application No. 6381 of 1998 and cognate matters decided by this Court [Coram: Hon'ble Mr. Justice Akil Kureshi] by judgment and order dated 5.7.1996. She further submitted that the subject petition may be disposed of by giving similar directions as have been given by virtue of the said judgment dated 5.7.2006.

2. Ms. Patel, learned AGP appearing for the respondents confirms the said statement by the learned advocate of the petitioner and submits that subject petition is similar to the group of matters which came to be disposed of by the said judgment and can be disposed of by similar directions.

3. Earlier, petitioner's Advocate brought on record the judgment and order dated 5.7.2006 passed in the aforesaid group of petitions. Some of the relevant facts necessary for passing appropriate orders in present petition as per the submissions of the learned advocates of petitioner and respondent, require to be stated. The facts, for the present purpose, can be summarized as follows;

(1) The petitioner is a Trust, who is, inter alia, engaged in running Secondary School in Taluka-Palsana of Surat District. The petitioner Trust had made an application to respondent No.2, i.e., Gujarat Secondary Education Board, for permission, with grant facilities, to start and run the secondary school from June 1990. It is the case of the petitioner that the said application was rejected by respondent No.2 Board on the ground that Secondary School was not inevitably required in the area where the petitioner Trust proposed to start the school.

(2) Aggrieved by the said decision and order of respondent No.2, the petitioner Trust had preferred an appeal before respondent No.1, State of Gujarat and after hearing the parties the respondent No.1 allowed the appeal and directed respondent No.2 to give permission to the petitioner Trust to start Secondary School. It is pertinent to note that the said direction was given subject to the condition that the petitioner shall not claim grant on permanent basis and that it shall have to give an

undertaking to the said effect. In other words, the permission to start and run the school was granted on the condition that petitioner Trust shall not be entitled for grant-in-aid and it shall not demand grant on permanent basis.

(3) The petitioner Trust accepted the said condition and agreed to start and run the school without facility of grant-in-aid and submitted undertaking to the said effect. In that view of the matter, the permission became operative and the petitioner's Trust started the school, initially by starting Standard VIII. It is the case of the petitioner that though at the relevant time the policy to extend the grant-in-aid was in operation, the petitioner was subjected to the said condition, i.e., the condition of not claiming grant-in-aid and was made to give an undertaking. The petitioner has also further contended that the delay caused by respondent No.1 in deciding the appeal was partly responsible in causing change in the stand of respondent No.1 and/or No.2 as regards extending the facility of grant-in-aid and that if there had not

been such delay the petitioner would have got the permission to start the school with facility of grant-in-aid. Be that as it may, the fact remains that the petitioner Trust accepted the said condition and also submitted the undertaking.

4. It is further contended by learned advocate for the petitioner that subsequently the petitioner Trust came to know that in certain cases despite the establishments had been granted permission with similar condition, exceptions were made out and despite undertakings having been given by such other establishments that they will not advance any claim for grant-in-aid, the said facility was granted. The petitioner has contended that immediately after it came to know about such instances, the petitioner Trust immediately made a representation in January 1999 claiming similar treatment, i.e.,putting forward its claim for grant-in-aid. The petitioner has also contended that in its representation it had even mentioned the names of the schools in whose cases such exceptions were made by respondent No.1. The petitioner has contended that though such schools had

been subjected to similar condition and had given undertakings for not demanding grant-in-aid, subsequently the respondent No.1 had entertained their requests for grant-in-aid and extended said facility and had therefore there was no justification in discriminating the petitioner by not giving similar treatment to the petitioner, i.e., in not extending the grant-in-aid facility to the petitioner school as well.

5. In background of such facts, the petitioner approached this Court by way of present petition praying for the following reliefs;

“(A) Your Lordships may be pleased to issue appropriate writ of mandamus or any other suitable writ, order or direction directing the respondents to provide grant facilities to the petitioner Trust for running the school;

(B) Pending admission, hearing and disposal of this Writ petition, your Lordships may be pleased to direct the respondents to provide grant facilities to the petitioner Trust for running the school;

[C] Be pleased to pass any other and further reliefs as may be deemed just and proper by Your Lordships in the facts and circumstances of the

case.”

It appears that when the petitioner preferred present petition, the representation made by it was not decided.

6. In counter to the said petition, the respondent No.1 has filed reply affidavit wherein the relief prayed for by the petitioner is opposed on almost similar grounds as were urged by respondent No.1 in respect of the said group of petitions which came to be decided earlier. Since the said contentions and objections of respondent No.1 have already been considered by the Court in detail in the said judgment, it would not be necessary to again deal with the same in present case. The contentions and objections advanced by respondent No.1 in its Reply Affidavit have been countered by the petitioner by filing Rejoinder Affidavit. In the Rejoinder Affidavit, the petitioner has cited 3 instances wherein the schools which were earlier not extended facility of grant-in-aid, came to be favoured with the grant-in-aid facility by subsequently converting the said schools to grantable schools.

7. On perusal of the copy of the judgment and order dated 5.7.2006, on which the petitioner has placed reliance, it appears that barring the lead matter i.e., SCA No. 6381 of 1998, all other petitions were filed around the same time when present petition came to be filed by the petitioner. It is in light of the said fact that the learned advocate for the petitioner submitted that the subject petition also would have been decided by the same common judgment and order, however due to some reason not known to the petitioner the petition was not placed for hearing along with the said group of matter and that therefore it could not be decided with the said group of petitions. However the facts of present matter are, in submission of learned advocate of the petitioner, similar to the facts in the said group of matters, after going through the said judgment and order, the learned AGP has not disputed the said assertion of the petitioner's advocate. In such facts and circumstances, I am bound by the precedent and must follow the said judgment.

8. It is in light of such facts and

circumstances that the observations made by the Court in the aforesaid common judgment and order are relevant and applicable. Some of the observations by the Court in the said judgment, which may be appropriate and relevant so as to aid the directions in present matter, are as follows;

> “11.....All the petitioners were granted permission either by the Board or in appeal by the State Government to start schools without the benefit of grant. The petitioners accepted such terms and recognitions with clear understanding that the Government will not bear the burden for running the schools. In fact, all the petitioners agreed not to claim grant even in future. In that view of the matter, it can be seen that the petitioners have no right to insist that their cases for conversion from non-grant-in-aid schools to grant-in-aid schools must be accepted by the State. The question of providing grant for secondary and higher secondary education must depend on the Government policy and budgetary allocation. The petitioners who

received permission and recognition on a clear understanding that the Government will not bear the financial burden of running such institutions cannot claim, as a matter of right, that their applications must be accepted. .....Once an institution voluntarily accepts that it would abide by various conditions, it would not be justified in raising a grievance that certain conditions are harsh. In the case of Adarsh Pragati Mandal (supra), also learned single Judge observed that giving of grant is not automatic and the same must be subject to certain criteria including financial viability. It was observed that to claim grant-in-aid is not a legal or fundamental right and the same is a policy matter of the Government which can be based on ground realities and factual situation in each case. It is also observed by the learned single Judge in the case of Vidhya Sagar Education Trust (supra) that each case must depend on its individual facts and it would not be possible to compare two different cases.

12. The petitioners who had thus received permission to start their schools without the facility of grant, therefore, cannot, as a matter of right, claim that their applications for conversion into

grant-in-aid institutions must be accepted.

13. The entire problem, however, cannot be decided on this basis alone. Though the petitioners have no legal right to insist that they must get grant as a matter of right, however limited, the petitioners do have a right to seek that their applications be considered by the authorities on the basis of the prevalent policy. Despite the petitioners having been informed in clear terms that they will not receive grant and despite the petitioners having clearly agreed that they will not claim grant even in future, their applications cannot be kept out of consideration by the Government for all times to come under all circumstances. This is so since the Government itself in large number of cases has considered the

applications for conversion from non-grant-in-aid institutions to grant-in-aid institutions. Even if such requests are accepted on rare occasions and only upon special case being made out, nevertheless,there are large number of instances brought on record wherein the State Government itself despite such clear understanding and undertakings by the institutions considered and granted such applications for conversion. ..... Even if the question of release of grant is as matter of policy of the Government, surely such policy cannot be implemented indiscriminately. The policy should be implemented uniformly and similarly situated persons should be treated similarly. Any deviation from such a path without valid reasons would be opposed to the equality clause enshrined in Article 14 of the Constitution and would be struck down by the court of law. In the nut-shell, therefore, though the petitioners have no legal right to insist that they must be given grant by the Government, their applications must be considered by the Government

> on the basis of some uniform policy which would apply to all similarly situated cases.....”
>
> “16.....The petitioners cannot be enriched for the past years for having run the schools through other means including by charging full fees from the students in some cases. Their stand that their cases should be considered on the basis of the earlier policy of the Government and in any case on the basis of factual matrix obtaining at the relevant time also cannot be accepted. .....The ground realities have undergone changes since the applications were made by the institutions to the Government. The applications, therefore, must receive consideration as the situation prevails at present on the basis of the current Government policy.”

9. Since, like in the said group of matters, in present case also petitioner's application has been rejected or has not been attended to at all, solely on the ground that petitioner had at one stage given undertaking and agreed not to avail of the facility

of grant-in-aid, grant, it is appropriate that this petitioners also should get the same relief as the petitioners in the said group of petitions, particularly when the similarity of facts in both cases is not disputed by respondents.

10. One of the conditions prescribed by this Court in the said judgment was that the schools whose cases were required to be considered by the authority should not have been closed down. In other words, the Court directed that those cases will be considered wherein schools have not been closed down subsequently. In that view of the matter, the petitioner in present case was directed to file an affidavit stating the factual aspect about present status of the school. In pursuance of the said direction an affidavit dated 10th December 2007, made by one Shri Swami Krishnaprakashdasji Shastri, came to be submitted. That in the said affidavit, the petitioner has stated that, “after the recognition order the school is running continuously without grant facility. The petitioner has applied for grant facility and the issue is pending in the aforesaid

petition. It is submitted that at present the school is running and in the school there are 3 classes, i.e., one class each of Standard VIII, IX and X in the school and the teachers are appointed as per bye-laws and in Std. VIII, 60; in Std. IX, 40; and in Std. X, 38 students are studying." Along with the said affidavit, the petitioner has annexed the statement containing the details of the names of the staff/teachers and another statement purporting to be for the month of December 2007 is also annexed. Hence, by the said affidavit it is demonstrated that the school is presently running and is not closed down.

11. In the backdrop of the aforesaid facts and circumstances and in light of the statements made by learned advocate for the petitioner and the learned AGP for the respondents that the facts of the present case are similar to the case which came to be decided by this Court by judgment dated 5.7.2006, and this petition also may be disposed by similar directions, I am inclined to accept the said submissions. Therefore, following order is passed.

12. It is directed that in respect of this petitioner also,the respondents shall abide by and follow the directions given by the Court in judgment and order dated 5.7.2006 passed in S.C.A. No. 6718 of 1998 and other matters.

(i) Application shall be considered by the competent authority applying the guidelines laid down by the Government in pursuance of directions in the judgment dated 5.7.2006.

(ii) While considering such applications, either accepting or rejecting, the authorities shall record and communicate the applicant its brief reasons for the conclusion.

(iii) The petitioner's application will be considered by the Government in light of the policy that may be circulated. Such consideration shall be prospective and on the basis of the Government policy being framed. Such consideration shall be expeditious and the concerned institutions will be communicated the outcome thereof

within a period of eight weeks from the date of receipt of a copy of this order.

13. Before concluding, it is required to note that the learned advocate for respondent No.1 has placed on record, Government Resolution dated 15.11.2006 which is said to have been issued pursuant to and in compliance of the said direction given by the Court by virtue of the aforesaid judgment and order dated 5.7.2006. Learned advocate for respondent, by placing the said G.R., on record, tries to submit that the direction given by the Hon'ble Court for framing a policy which shall be applied uniformly to all with regard to the issue of grant-in-aid, has been complied with. It appears that, by said G.R., dated 15.11.2006, the respondent seems to have formulated criteria or guidelines regarding grant-in aid facility to the schools which may be granted permission hereafter. It is pertinent that by aforesaid judgment dated 5.7.2006 the Court directed the respondents not only to frame necessary policy but also to ensure that the policy is applied without discrimination and it was in furtherance of

the said directions that the other conditions, produced hereinabove, came to be passed. In the result, the petition is allowed. The respondents are directed to consider the petitioner's case in light of and by applying the same directions mentioned in the aforesaid judgment and to abide by the said conditions and directions. The representation of the petitioner may be accordingly decided by the respondents as early as possible and preferably within a period of eight weeks from the date of

receipt of this order. Rule made absolute. No order as to costs.

[K.M. Thaker, J.]

rmr.